

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

CAROL LEHMKUHL, Individually and
on Behalf of All Others Similarly Situated

PLAINTIFF

v.

No. 4:20-cv-518-DPM

TRAVEL NURSE ACROSS
AMERICA, LLC

DEFENDANT

ORDER

Carol Lehmkuhl is a surgical technician who worked for Travel Nurse Across America. The company hires medical professionals and assigns them to different medical facilities that need staff. Lehmkuhl alleges that Travel Nurse didn't pay her enough overtime while she was on assignment. Travel Nurse seeks judgment as a matter of law based on Lehmkuhl's complaint. FED. R. CIV. P. 12(c).

The Court accepts all the pleaded facts as true and takes all reasonable inferences in Lehmkuhl's favor. *Poehl v. Countrywide Home Loans, Inc.*, 528 F.3d 1093, 1096 (8th Cir. 2008). Travel Nurse didn't include meal allowances, housing allowances, or on-call bonuses when calculating overtime. Lehmkuhl hasn't pleaded sufficient facts that the allowances were nonexcludable because they did not reasonably approximate travel expenses incurred. 29 U.S.C. § 207(e)(2); 29 C.F.R. § 778.217(a). Lehmkuhl's pleadings about the bonuses is sufficient. It's

plausible that the bonuses weren't exempt because they were based on a pre-set formula, appear to have been promised in advance, and weren't discretionary. *Doc. 1 at 4*; 29 C.F.R. §§ 778.208 & 778.211(b).

Motion for judgment on the pleadings, *Doc. 7*, partly granted and partly denied. Embedded request to amend, *Doc. 11 at 6*, granted. Amended complaint due by 7 August 2020. Answer and response to the motion to certify due by 21 August 2020. Reply due seven days after the response is filed.

So Ordered.

D.P. Marshall Jr.

D.P. Marshall Jr.
United States District Judge

3 August 2020